

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Verified Petition of ILLINOIS BELL TELEPHONE)
COMPANY, and VERIZON NORTH INC. and)
VERIZON SOUTH INC. for Waiver of the Equal) Docket No. 07-
Access Scripting Requirements of 83 Ill. Adm. Code)
Part 773.140(b))**

JOINT VERIFIED PETITION OF AT&T ILLINOIS AND VERIZON FOR WAIVER

Illinois Bell Telephone Company (“AT&T Illinois”), and Verizon North Inc. and Verizon South Inc. (together, “Verizon”), by their attorneys (collectively “Petitioners”), hereby submit their verified petition (“Petition”) for a permanent waiver of the equal access scripting obligations of 83 Ill. Admin. Code 773.140(b), which requires that local exchange carriers inform new customers that they have a choice of long distance providers and can choose different providers for local toll (intraLATA) and long distance (interLATA) services.

INTRODUCTION

On August 31, 2007, the Federal Communications Commission (“FCC”) released an order exercising its authority to forbear from applying a substantially similar FCC disclosure requirement for long distance services to the Regional Bell Operating Companies (“RBOCs”) and their independent incumbent local exchange carrier (“ILEC”) affiliates.¹ For the reasons described below, the same public interest reasons that led the FCC to enter its forbearance order, coupled with the importance of consistency between federal and state disclosure requirements,

¹*In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules, CC Docket No. 00-175, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, FCC 07-159, adopted August 30, 2007, released August 31, 2007 (“FCC Long Distance Order”).*

should lead the Commission to grant Petitioners' requested waiver of the Commission's disclosure requirement in Illinois. In support of this Petition, AT&T Illinois submits the attached testimony of Rebecca A. Sutherland, and Verizon submits the attached testimony of Karen H. Boswell.

Petitioners emphasize that the requested waiver is limited to a requirement applicable only to customers ordering new telephone service, and would provide relief no broader than the interLATA relief already ordered by the FCC. Granting the Petition will not impact any customer's choice of long distance provider. To the contrary, customers will continue to have the right to obtain intraLATA and interLATA toll service from the provider of their choice, and Petitioners will continue to honor those choices. In addition, Petitioners will continue to comply with the requirements of Section 773.140(a), from which they do not seek a waiver.

BACKGROUND

Implementation of Long Distance Competition

The 1984 divestiture of the Bell System created a clear distinction between local and long distance markets. Competition in the long distance market then was in an early stage, with the post-divestiture AT&T Corp. being the predominant long distance, or interexchange, carrier ("IXC"). One of the FCC's policy goals was to spur competition and consumer choice by mandating "equal access," which allowed customers "to access facilities of a designated [IXC] by dialing '1' only."² The FCC imposed the equal access scripting requirement ("EA Scripting

² *In the Matter of Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 101 FCC 2d 911, ¶ 1 (1985).

Requirement”) to promote competition among providers of interLATA long distance services.³

At the time, the ILECs could provide only local exchange service. However, they were often the customer’s initial point of contact for establishing toll service. The FCC’s EA Scripting Requirement mandated that ILECs inform new local exchange customers that they could obtain stand-alone long distance service from various carriers, and that ILECs offer to read to customers a list of carriers providing long distance service in their area. The EA Scripting Requirement thus helped to ensure that customers fully understood that they had a choice of interLATA long distance service providers. The Telecommunications Act of 1996 subsequently codified the continued applicability of the FCC’s equal access requirements at 47 U.S.C. § 251(g).

Development of the Illinois EA Scripting Requirement

Illinois adopted a similar EA scripting requirement in 1995 as part of the Part 773 rules, which introduced presubscription for intrastate, intraLATA toll calling.⁴ With presubscription, a customer could designate a particular carrier for “local” toll calls and make such calls by only dialing “1” plus the number of the party being called, as opposed to having to dial an access number or code to obtain service from the customer’s desired local toll carrier. The Illinois EA scripting requirement in Section 773.140 was intended to promote competition in the local toll market, when competition in that market was new, by requiring that customers be informed of their ability to choose toll carriers and to hear, upon request, a list of such providers.

³ *United States v. Western Elec. Co., Inc.*, 578 F. Supp. 668, 670 (D.D.C. 1983) (equal access requirements were meant to abolish a "substantial disparity in dialing convenience" caused by end-users having to dial a multiple-digit access code to access interexchange carriers other than AT&T).

⁴ See Order, *Illinois Commerce Commission On Its Own Motion: Adoption of rules relating to intra-Market Service Area presubscription and changes in dialing arrangements related to the implementation of such presubscription*, Docket No. 94-0048 (Apr. 7, 1995) (“1995 EA Order”).

The version of Section 773.140 that the Commission adopted in 1995 established a process for advising existing customers of the availability of presubscription and of the way customers could select among their carrier choices. The rule also required ILECs to advise new customers that they could select from various carriers for their presubscribed interexchange service and offer to provide customers with the names and telephone numbers of interexchange carriers serving their area. *See 1995 EA Order*, Appendix A, Section 773.140(a) & (c).

In 2003, the Commission undertook a comprehensive review of the Part 773 rules in Docket No. 03-0203 because “many of its provisions [had] become outdated or no longer applicable.”⁵ As part of this review, Staff, carriers and other interested parties participated in a series of workshops that led to the submission of proposed amendments to Part 773. The parties reached consensus on revising each section of Part 773 except Section 773.140. The appropriate way to revise that section was the only contested issue in the docket.

In its Comments to the Commission in the docket, Staff explained that its proposed changes to Section 773.140 were appropriate “in light of the increased competition in toll services since 1995, and the heightened levels of consumer knowledge and sophistication concerning competitive choices in toll services.”⁶ Staff also noted that the FCC’s rules governing contacts with customers seeking new service were “broadly similar” to its proposed revision to Section 773.140, that the FCC was re-examining its rules, and that Staff believed that the FCC would change its rules in a manner similar to Staff’s proposed changes for Section 773.140. *2003 Staff Comments* at 7. The Commission adopted Staff’s proposed revision to

⁵Order, *Illinois Commerce Commission on Its Own Motion: Amendment of 83 Ill. Admin. Code 773*, Docket No. 03-0203, at 1 (Dec. 17, 2003) (“*2003 EA Order*”).

⁶Comments of the Staff of the Illinois Commerce Commission, Docket No. 03-0203, at 7 (June 23, 2003) (“*2003 Staff Comments*”).

Section 773.140, finding that it “mirrors the current federal requirement and represents a reasonable balance” among the parties’ positions. *2003 EA Order* at 8 (emphasis added).

Section 773.140 currently reads:

- a) Each LEC shall provide oral, written, or prerecorded information to its customers of the availability of presubscription. The information shall be provided in clear and neutral language, and shall describe presubscription, the option of presubscription, how to unfreeze or change a PIC, and any related charges in a manner that does not attempt to influence customers regarding their selections.
- b) On an incoming call from a new customer requesting network access service, the company representative shall inform the customer that he has a choice of long distance providers and that different providers can be chosen for local toll (intraLATA) and long distance (interLATA) services.

83 Ill. Admin. Code § 773.140.

The August 31, 2007 FCC Long Distance Order

In the August 31, 2007 *FCC Long Distance Order*, the FCC established a new framework to govern the provision of in-region, long distance services by the RBOCs and their independent ILEC affiliates. This new framework replaced “unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing the BOCs . . . to respond to marketplace demands efficiently and effectively.” *FCC Long Distance Order* at ¶ 1. In so doing, the FCC granted AT&T, Inc.'s petition for forbearance from application of the federal EA Scripting Requirement for interLATA long-distance communications for both intrastate and interstate services. *Id.* at ¶¶ 117-127. Although the FCC was considering only a forbearance petition from AT&T, the agency ultimately concluded that its analysis applied equally to the other RBOCs, and it was thus reasonable to forbear from applying the EA Scripting Requirement to Verizon and Qwest and their independent ILEC affiliates. *Id.* at ¶¶

125-126.⁷

The FCC concluded that such action served the public interest for several reasons. First, the EA Scripting Requirement was designed to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of such services was nascent and there was little, if any, competition in the provision of local exchange service. *Id.* at ¶ 120. The FCC found that, over the years, competition in the telecommunications market had grown by leaps and bounds, and the nature of that competition had changed significantly. Overall, “market conditions have changed substantially, greatly reducing the benefits of the [equal access] scripting requirement.” *Id.*

In particular, the FCC found that “the stand-alone long distance competition that the EA Scripting Requirement was designed to protect has largely given way to competition between service bundles that include both local exchange and long distance service or ‘any distance’ minutes that can be used for both local exchange and long distance calling.” *Id.* at ¶ 121.⁸ Moreover, the agency found that the minority of customers that still purchased stand-alone long distance services now had additional options available for making long distance calls, including prepaid calling cards and mobile wireless services that allow customers to use their “buckets of minutes” to make long distance calls at zero marginal cost. *Id.* at ¶ 122.

Despite these changes in the market, the EA Scripting Requirement focused solely on alternative presubscribed wireline long distance providers. The FCC found that “[i]nstead of increasing consumer awareness of competitive alternatives . . . the artificially narrow focus of the EA Scripting Requirement may, in fact, confuse or mislead consumers and cause them not to

⁷ Verizon North Inc. and Verizon South Inc. are applicable “affiliates” under the *FCC Long Distance Order*.

⁸ For example, service bundles are increasingly available from cable operators and interconnected VoIP providers. *Id.* at ¶ 121.

investigate alternative means of making long distance calls.” *Id.* The FCC also found that the requirements imposed “unnecessary costs” on the RBOCs. *Id.* at ¶ 124.

For these reasons, the agency concluded that “competition for stand-alone long distance services would function better absent the potential market-place distorting effects of the current EA scripting requirement.” *Id.* at ¶ 122.⁹ Accordingly, it granted forbearance from continued application of the scripting requirement effective August 31, 2007. *Id.* at ¶ 127.

The Current State of the Illinois Market

The market changes cited by the FCC are present in Illinois and should lead the Commission to grant a comparable waiver of 83 Ill. Admin. Code 773.140(b). As the testimony of Ms. Boswell and Ms. Sutherland explains in more detail, the market for telecommunications services, in general, and toll service, in particular, has changed drastically in Illinois over the last 20 years.

First, Illinois customers have choices that they did not have before, with regard both to service providers and to types of service. Second, customers are very much aware that they have a variety of choices to meet their telecommunications needs. Third, the market changes have led customers to think differently about how they purchase telecommunications services. Finally, these various changes have had a substantial impact on the stand-alone long-distance market – the market that was the FCC’s focus when it adopted the EA Scripting Requirement. In summary, the FCC’s conclusions – that the equal access interLATA disclosures are no longer a benefit to customers (or competition) and impose unnecessary costs – hold equally true in Illinois

⁹ See also *id.* at ¶¶ 123-24 (stating that “current EA Scripting Requirement is likely to distort competition” and “harm consumers” and thus that “forbearance from that requirement is in the public interest”).

for intraLATA disclosures.¹⁰

REASONS FOR WAIVER

Section 13-513 of the Public Utilities Act (“PUA”) provides that a telecommunications carrier may obtain a waiver of any Commission rule when there is sufficient reason for the relief:

Waiver of Rules. A telecommunications carrier may petition for waiver of the application of a rule issued pursuant to this Act. The burden of proof in establishing the right to a waiver shall be upon the petitioner. The petition shall include a demonstration that the waiver would not harm consumers and would not impede the development or operation of a competitive market. Upon such demonstration, the Commission may waive the application of the rule, but not the application of a provision of this Act. The Commission may conduct an investigation of the petition on its own motion or at the request of a potentially affected person. If no investigation is conducted, the waiver shall be granted 30 days after the petition is filed.

220 ILCS 5/13-513. That standard is met here.

As demonstrated below and in the accompanying testimony, granting the requested waiver of Section 773.140(b) would not harm consumers. Nor would it impede the operation of the competitive market that has developed for intraLATA toll services. Indeed, the *FCC Long Distance Order* held that retention of the federal EA Scripting Requirement was harmful to both consumers and to competition. *FCC Long Distance Order* at ¶ 123. Finally, granting the waiver would promote the Commission’s stated goal of maintaining consistency between federal and state requirements in this area by mirroring the current federal law, as the Commission did in

¹⁰ In the *FCC Long Distance Order*, the FCC made no distinction between interLATA and intraLATA toll services in analyzing the harms caused by the EA Scripting Requirement. There is therefore good reason to conclude that any state requirement to continue equal access disclosures would be preempted. Certainly such a requirement would undermine the FCC’s national policy against such scripting and would stand “as an obstacle to the accomplishment and execution of the important means-related federal objectives” that are central to the FCC’s deregulatory policy. A state requirement providing such an obstacle is preempted. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872, 881-82 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The Commission should recognize that continued imposition of a scripting requirement for intraLATA toll services is inconsistent with the federal policy enunciated in the *FCC Long Distance Order* and therefore would be preempted.

Docket No. 03-0203.

1. Granting the Waiver Would Not Harm Consumers.

Customers would not be harmed by elimination of the EA scripting requirement and, in fact, many customers would benefit. As explained in the accompanying testimony, eliminating the requirement would save customers' time. Customers today are quite educated on their telecommunications choices, and most customers know, before they call AT&T Illinois or Verizon, which carrier they want to select for their local and toll service. As a result, it is no longer necessary for customers to rely on Petitioners to identify their carrier options. Listing such options simply increases the length of the call by providing information the customer has no need to hear.

In addition, as both Ms. Sunderland's and Ms. Boswell's testimony explains, elimination of Illinois' intraLATA EA scripting requirement would eliminate a potential source of customer confusion. It could be misleading to inform customers that they have a choice of carriers for the provision of intraLATA long distance service, pursuant to Section 773.140(b), while saying nothing about the choice of carriers they have for interLATA long distance service. A customer might infer from such silence that he or she has no choice with respect to interLATA long distance service. That inference would be incorrect and could lead to customer confusion. A customer might also incorrectly believe that options beyond the listed wireline providers are unavailable.

The FCC specifically found that retention of the federal EA Scripting Requirement could "confuse or mislead consumers." *FCC Long Distance Order* at ¶ 123. This Commission should follow the FCC's lead and reach a similar conclusion.

2. Granting the Waiver Would Not Impede Operation of a Competitive Market.

The FCC required equal access scripting when competition for toll services was first introduced in order to promote and protect competition in the stand-alone long distance market. The market has changed since then. The FCC recently concluded that competition in the stand-alone long distance market has largely been replaced by competition among the service bundles that have proliferated in the telecommunications market, turning the stand-alone long distance market into “a fringe market.” *Id.* at ¶121. It also concluded that retention of the scripting requirement for Petitioners, at a federal level, did not promote the public interest and could be harmful to competition. *Id.* at ¶¶ 123-124.

These conclusions are equally valid for Illinois. As the testimony explains, there are many toll providers in Illinois, and plentiful advertising assures that consumers and businesses remain aware that they have all these choices for telecommunications services. The Commission should find that granting Petitioners’ waiver request will not impede the operation of the competitive market that has already developed.¹¹

3. Granting the Waiver Would Maintain Consistency between Illinois and Federal Standards.

Apart from meeting the waiver standards set forth in Section 13-513 of the PUA and being consistent with the public interest, there is an additional reason that the Commission should grant the Petition. Granting a waiver of Section 773.140(b) would maintain consistency between federal and Illinois standards in this area.

This Commission has previously discussed the importance of having the Illinois rules be

¹¹ See also 2003 Staff Comments at 7 (referring to increased competition in market for toll services).

compatible with the FCC's equal access disclosure requirements. For example, when the Commission amended the Part 773 rules in Docket No. 03-0203, it had to evaluate competing proposals for revisions to Section 773.140. The Commission adopted the proposed Staff revisions to this section, finding that Staff's proposal was preferable because it "mirrors the current federal requirement and represents a reasonable balance" between the positions of the different carriers. *2003 EA Order* at 8 (emphasis added).

The *FCC Long Distance Order* makes clear that the federal view of the need for equal access disclosures has changed since the conclusion of Docket No. 03-0203. This Commission should again ensure consistency between federal interLATA and state intraLATA equal access disclosures and act to align its regulation with the less restrictive, and national, approach of the FCC.

Such action is consistent with the national trend. A number of states, including Arkansas, Oklahoma, Kansas and Texas, eliminated their intraLATA equal access scripting requirements even prior to the issuance of the *FCC's Long Distance Order*, and the Ohio and Missouri commissions have recently eliminated their intraLATA equal access scripting requirements as a direct result of that order.¹² The Ohio Commission specifically held that "maintaining the equal access scripting requirement for AT&T and Verizon on the intrastate side will effectively increase the potential for customer confusion that the FCC's decision is designed to avoid." *See PUCO Order* at 6. Similarly, the *MPSC Order* noted Staff's opinion, adopted by the Missouri Commission, that "the modification is consistent with the orders of the Federal Communications

¹² See Entry on Rehearing, *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Public Utilities Commission of Ohio Case No. 06-1344-TP-ORD (October 17, 2007) ("*PUCO Order*") at 6; and Order Modifying AT&T's IntraLATA Toll Dialing Plan, *In the Matter of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri's IntraLATA Long Distance Dialing Parity Plan*, Missouri Public Service Commission Case No. TO-99-535 (October 30, 2007) ("*MPSC Order*") at 1-2.

Commission ... and will do no harm to the general public.” *See MPSC Order* at 6.

4. Granting the Waiver Would Clarify the Scope of the Part 773 Rules.

The Commission also could use this petition as an opportunity to address a possible ambiguity in the Part 773 rules. The current rules (and the *2003 EA Order*) suggest that the Commission’s EA Scripting Requirement applies to more than intraLATA toll calling. For example, Section 773.140(b) – the subject of this waiver request – requires carriers to tell customers that they have a choice of carriers for both “local toll (intraLATA) and long distance (interLATA) services.” 83 Ill. Admin. Code § 773.140(b) (emphasis added).¹³ Similarly, the Commission’s order in Docket No. 03-0203, adopting the current version of the Part 773 rules, describes the rules as applying to “intrastate presubscription in Illinois.” *2003 EA Order* at 1.

However, the FCC’s authority in this area extends to all interLATA services – whether interstate or intrastate.¹⁴ As a result, federal law, rather than Section 773.140(b), was the source of any legal obligation Petitioners had to comply with an EA scripting requirement for intrastate, interLATA service. The recent *FCC Long Distance Order* unquestionably eliminates that obligation for interLATA service. Accordingly, if the Commission grants the Petition, it should specify that Section 773.140(b), and the waiver, apply only to intraLATA toll calls.

CONCLUSION

For the foregoing reasons, AT&T Illinois and Verizon respectfully request a permanent waiver of the equal access disclosure requirement set forth in 83 Ill. Admin. Code 773.140(b).

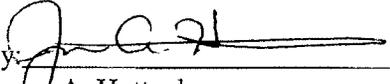
¹³ *See also* 83 Ill. Admin. Code § 773.10 (defining “presubscription” as procedure by which customer can predesignate carriers “for its presubscribed switched intraMSA and interMSA calls, without dialing an access code”).

¹⁴ *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 34 (1996), *modified on recon.*, 12 FCC Rcd 2297, *further recon.*, 12 FCC Rcd 8653 (1997).

Dated: November 12, 2007

Respectfully submitted,

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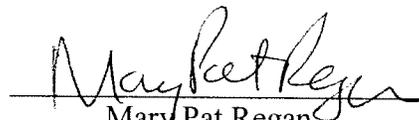
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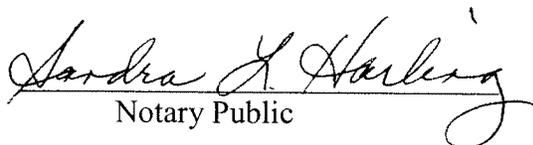
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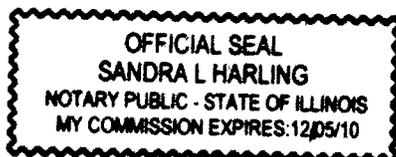
VERIFICATION

I, Mary Pat Regan, state that I am Vice President-Regulatory of Illinois Bell Telephone Company (“AT&T Illinois”), that I have read the above foregoing **Verified Petition of Illinois Bell Telephone Company, and Verizon North Inc. and Verizon South Inc. for Waiver of the Equal Access Scripting Requirements of 83 Ill. Adm. Code Part 773.140(b)** and know the contents thereof, and that the same are true to the best of my knowledge, information and belief.


Mary Pat Regan

Subscribed and sworn to before
me this 9th day of November, 2007.


Notary Public



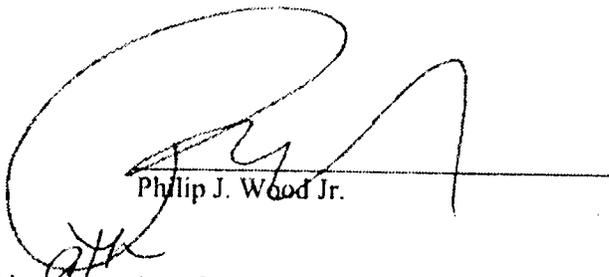
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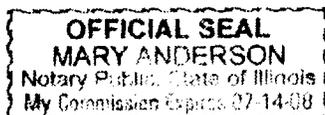
**STATE OF ILLINOIS)
COUNTY OF McLEAN)**

VERIFICATION

Philip J. Wood Jr., being duly sworn, states on oath that he is Verizon's Vice President of Public Affairs, Policy & Communications for Illinois, and that the factual statements made on behalf of Verizon North Inc. and Verizon South Inc. in the foregoing "Joint Verified Petition of AT&T Illinois and Verizon for Waiver" are complete and accurate to the best of his knowledge, information and belief.


Philip J. Wood Jr.

Subscribed and sworn to before me this 9th day of November, 2007.



Mary Anderson